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**IMPERIAL PROJECT
IMPERIAL COUNTY, CALIFORNIA**

**REVISED SIGNIFICANCE DETERMINATIONS UNDER CEQA
FOR ENVIRONMENTAL IMPACTS ON "ENDANGERED, RARE
OR THREATENED" BIOLOGICAL RESOURCES**

**RECIRCULATED SUPPLEMENT TO DRAFT
ENVIRONMENTAL IMPACT STATEMENT/
ENVIRONMENTAL IMPACT REPORT**

State Clearinghouse No. 95041025

MARCH 1999

Applicant

Glamis Imperial Corporation

Prepared By:

Bureau of Land Management
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County of Imperial
Planning/Building Department
El Centro, California

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Dear Reader:

This document, prepared jointly by the County of Imperial, as the lead agency under the California Environmental Quality Act ("CEQA") (Pub. Resources Code, § 21000 et seq.) and the United States Bureau of Land Management, El Centro Field Office, of the California Desert District ("BLM"), as the lead agency for the Project under the National Environmental Policy Act ("NEPA") (42 U.S.C. § 4321 et seq.), is a supplement to the analysis of biological resources in the November 1997 Draft Environmental Impact Statement/Environmental Impact Report ("EIS/EIR") (State Clearinghouse No. 95041025) for the proposed Imperial Project ("Project"). As discussed in the Draft EIS/EIR, the Project is a proposal by Glamis Imperial Corporation to develop an open-pit, precious metal mining operation utilizing heap leach processes. The Project area, which is located entirely on public lands administered by the BLM, is located in eastern Imperial County, California, approximately 45 miles northeast of El Centro, California, and 20 miles northwest of Yuma, Arizona, northeast of Ogilby Road along Indian Pass Road.

In November 1997, Imperial County and the BLM jointly prepared and released the Draft EIS/EIR. The Draft EIS/EIR analyzes the environmental effects, mitigation measures, and alternatives to the Project. With respect to this supplement, the Draft EIS/EIR addresses the "Environmental Consequences and Mitigation Measures" for biological resources in section 4.1.5 at pages 4-45 to 4-78. Ultimately, the Draft EIS/EIR concludes the "mitigated effects of the [Project] on biological resources are below the levels of significance." (Draft EIS/EIR, § 4.1.5.5, p. 4-78.) The determinations in the Draft EIS/EIR regarding biological impacts are based on the *thresholds of significance* for Project-related impacts on biological resources set forth in section 4.1.5.1 at page 4-46.

This supplement adds a new threshold of significance to assess the significance of Project-related impacts on certain biological resources for Imperial County's review of the Project under CEQA. In general, the new significance threshold establishes a much lower threshold of significance for impacts on "endangered, rare or threatened species" listed under the state and federal Endangered Species Acts. (See generally 16 U.S.C. § 1531 et seq.; Cal. Fish & G. Code, § 2050 et seq.) The supplement and the new threshold of significance concern the County's actions under CEQA alone. BLM's threshold of significance to assess the significance of Project-related impact on these same biological resources under NEPA remains as described in the Draft EIS/EIR.

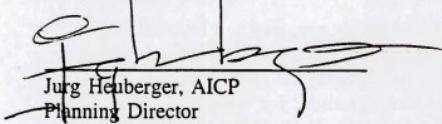
Imperial County and the BLM believe the new significance threshold for impacts on biological resources and the related determinations regarding the significance of Project-related impacts on listed species should be subjected to public review and comment. (See CEQA Guidelines, § 15088.5 and BLM's NEPA Handbook H-1790-1,

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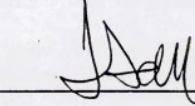
Chapter V, § B.3.b and Chapter III, § D.4.a). Imperial County and the BLM welcome written comments concerning this supplement to the Draft EIS/EIR during a 60-day public review period. All comments submitted regarding this supplement will be considered in the preparation of the Final EIS/EIR. Comments received that exceed the scope of this supplement will not be addressed in the Final EIS/EIR. (CEQA Guidelines, § 15088.5, subd. (f)(2).) To be considered, written comments regarding this document alone must be postmarked or otherwise delivered by 4:30 p.m. on May 19, 1999, at the following address:

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939 Main Street
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Respectfully submitted,



Jurg Heuberger, AICP
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Tim Salt
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1.0 INTRODUCTION

In consultation with the BLM, Imperial County prepared this supplement and applies the new significance threshold under CEQA in response to a recent decision by the San Diego County Superior Court, a court in the same appellate district and division as Imperial County. The San Diego County Superior Court concluded in that decision that a lead agency abused its discretion under CEQA by failing to treat as significant the loss of habitat for certain species protected by the state and federal Endangered Species Acts. The San Diego County Superior Court decision can be construed to require a mandatory finding of significance under CEQA whenever project-related impacts result in any loss of habitat to any protected species. Based on the definition of “endangered, rare or threatened species” set forth in section 15380 of the “CEQA Guidelines” (Cal. Code Regs., tit. 14, § 15000 et seq.), the Superior Court decision can also be construed to require a mandatory finding of significance for impacts on listed species, except where a lead agency finds “no net loss” of the species or its habitat would result.

Imperial County understands the San Diego County Superior Court ruling is currently on appeal in Division One of the Fourth Appellate District. (*El Toro Reuse Planning Authority et al. v. Board of Supervisors of Orange County et al.*, 4th Dist. Court of Appeal No. D030810.) Because the appeal is currently pending, the trial court ruling could be affirmed or reversed. Should the Court of Appeal affirm the trial court ruling, however, that ruling would be binding authority in the Fourth Appellate District, an appellate district that includes Imperial County.

Imperial County concluded that it should re-assess the significance determinations under CEQA in the Draft EIS/EIR regarding Project-related impacts on certain biological resources because of the San Diego trial court ruling. To that end, this supplement relies on and incorporates by reference the underlying data, biological surveys, and other relevant information in the Draft EIS/EIR regarding biological resources. Thus, the scope of this supplement is limited to an assessment of whether certain Project-related impacts on biological resources are significant under CEQA in light of the new significance threshold for endangered, rare or threatened species. No new factual information is included in this document.

As set forth in the Draft EIS/EIR, the Project area consists of a Project mine and process area and a Project ancillary area. The Project mine and process area, which is comprised of approximately 1,571 acres of unpatented mining claims, would contain all of the open pits, waste rock stockpiles, soil stockpiles, ephemeral wash diversion channels, administration office and maintenance facility area, heap leach facility, precious metal recovery plant, an electric substation and internal roads and electrical distribution lines.

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The Project ancillary area would include ground water production wells, a buried water pipeline, and a new 92 kV/13.2 kV electrical transmission line, all located adjacent to Indian Pass Road, and two relocated portions of Indian Pass Road. In addition, the Imperial Irrigation District would overbuild an exiting 34.5 kV electric transmission line into a 92 kV/34.5 kV electric transmission line to provide electrical power for the Project. Together, these activities constitute the Project. As also set forth in the Draft EIS/EIR, the Project would create a total of 1,362 acres of disturbance.

Project-related impacts on biological resources are specifically addressed in the Draft EIS/EIR. The environmental consequences of, mitigation measures for, and level of significance of those impacts before and after mitigation are summarized in the Draft EIS/EIR in Table S.1. The significance determinations regarding effects on biological resource set forth in a summary fashion in Table S.1 at pages S-30 to S-43.

The “Affected Environment” for biological resources is described in section 3.5 of the Draft EIS/EIR at pages 3-38 to 3-81. That discussion includes a description of the regulatory framework governing biological resources, as well as a description of the existing conditions in the Project area for vegetation and wildlife. This supplement incorporates by reference and makes no changes to the discussion of the Affected Environment for biological resources in the Draft EIS/EIR.

The Draft EIS/EIR discusses the “Environmental Consequences and Mitigation Measures” for biological resources in section 4.1.5 at pages 4-45 to 4-78, and “Cumulative Effects” for biological resources in Section 5.3.3 at pages 5-12 to 5-15. This supplement also incorporates the discussion of Project-related and cumulative environmental consequences and mitigation measures in the Draft EIS/EIR for biological resources. This supplement, however, changes the discussion of Project-related and cumulative environmental consequences to biological resources in the Draft EIS/EIR in a single respect. As explained above, and as set forth below in detail, that change is limited to an assessment of whether Project-related and cumulative impacts on “endangered, rare or threatened” plant and animal species are significant under CEQA in light of a new, lower threshold of significance. (See CEQA Guidelines, §§ 15065, 15380.) The assessment of whether Project-related and cumulative impacts on “endangered, rare or threatened” plant and animal species are significant under NEPA remains unchanged from that presented in the Draft EIS/EIR.

2.0 SUMMARY OVERVIEW OF THE ANALYSIS IN THE DRAFT EIS/EIR RE: PROJECT EFFECTS ON CERTAIN BIOLOGICAL RESOURCES

2.1 Affected Environment

2.1.1 Vegetation

The biological setting for vegetation in the Project area is described in section 3.5.5 of the Draft EIS/EIR at pages 3-45 to 3-57. That discussion identifies 22 plant species of concern known to occur in the vicinity of the area of the Proposed Action. (Draft EIS/EIR, § 3.5.5.1, pp. 3-52 to 3-56.) Of the 22 plant species, only one, the Pierson's milk-vetch (*Astragalus magdalena* var. *Piersonii*), which is listed as endangered in California and proposed for endangered status at the federal level, falls within the definition in the CEQA Guidelines of an "endangered, rare or threatened" species. (See CEQA Guidelines, § 15380; see also Draft EIS/EIR, § 3.5.5.1, p. 3-53.) [On October 6, 1998, the U.S. Fish and Wildlife Service published the formal listing of the Pierson's milk-vetch (*Astragalus magdalenavar. Piersonii*) as threatened, effective on November 5, 1998 (Federal Register, Volume 63, Number 193, pages 53596-53615).] Finally, the same discussion explains, however, there is no potential habitat for the Pierson's milk-vetch in the Project area. (Draft EIS/EIR, § 3.5.5.1, p. 3-52.) Systematic biological surveys confirm there are "no state or federal listed, proposed, or special status species" within the Project area. (Draft EIS/EIR, § 3.5.5.2, pp. 3-56 to 3-57.)

2.1.2 Wildlife and Wildlife Habitat

The biological setting for wildlife in the affected Project area is described in section 3.5.6 of the Draft EIS/EIR at pages 3-57 to 3-81. Describing wildlife habitat, the Draft EIS/EIR discloses that approximately 95 percent of the Project mine and process area is comprised of desert scrub habitat with predominately scrub vegetation and relatively little succulent vegetation. The Draft EIS/EIR indicates the remaining 5 percent of the Project mine and process area, which is the area restricted to the wash bottoms and adjacent areas, is generally equivalent to microphyll woodland or desert dry wash woodland habitat, a habitat considered sensitive by the California Department of Fish & Game ("CDFG"). Thus, the Draft EIS/EIR discloses that approximately 139 acres of microphyll woodland habitat exists within the boundaries of the Project mine and process area. (Draft EIS/EIR, § 3.5.6, p. 3-57.) Finally, the Draft EIS/EIR discloses that two acres and one acre of microphyll woodland habitat would also be affected in the ancillary Project area and within the alignment of the transmission line/water pipeline, respectively. (Draft EIS/EIR, § 3.5.6, pp. 3-57 to 3-58.)

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As regards wildlife specifically, the Draft EIS/EIR identifies a total of 61 wildlife species of concern known to occur in the vicinity of the area of the Proposed Action. (Draft EIS/EIR, § 3.5.6.1, pp. 3-58 to 3-61.) Of the 61 species, 15 species fall within the definition in the CEQA Guidelines of an “endangered, rare or threatened” wildlife species. (See CEQA Guidelines, § 15380; see also Draft EIS/EIR, § 3.5.6.1, p. 3-59 to 3-60.) Of the 15 listed species, only three, the Desert tortoise (*Gopherus agassizii*), which is listed as threatened under both the state and federal Endangered Species Acts, the peregrine falcon (*Falco peregrinus*), which is listed as endangered under the state and federal Endangered Species Acts, and the Gila Woodpecker (*Melanerpes uropygialis*), which is listed under the endangered California Endangered Species Act, have potential habitat in the area of the Proposed Action. (Draft EIS/EIR, § 3.5.6.1, pp. 3-58 to 3-61, 3-63 to 3-64, 3-67.)

Twenty-nine of the 61 species do not have potential habitat in the area of the Proposed Action. (Draft EIS/EIR, § 3.5.6.1, p. 3-58.) In contrast, the Draft EIS/EIR describes each of the 32 wildlife species of concern that may potentially occur on or near the area of the Proposed Action because of their geographic ranges and preferred habitats in the same section of the Draft EIS/EIR at pages 3-61 to 3-70. Finally, the Draft EIS/EIR summarizes the results from on-site biological surveys. (Draft EIS/EIR, § 3.5.6.2, pp. 3-71 to 3-81.)

Systematic on-site biological surveys documented the presence of two of the listed species in the Project area. Thirty-two observations of live individuals of the first species, the desert tortoise, were observed in the Project area. The same surveys also identified other desert tortoise “sign” in the Project area. Thus, the Draft EIS/EIR estimates a total of between 33 and 57 individual desert tortoise are present on or within the Project mine and process area. (Draft EIS/EIR, § 3.5.6.2, p. 3-72.)

The second listed species observed during the biological surveys of the Project area is the Gila woodpecker. This siting, however, was limited to a single event and a single individual. Because additional searches for the single individual or other individuals, including using recorded bird calls to elicit a response were negative, the Draft EIS/EIR deems the single observation of the individual woodpecker on-site as that of a “transient bird.” (Draft EIS/EIR, § 3.5.6.2, p. 3-72.)

Finally, the Draft EIS/EIR discloses that no other listed wildlife species, including the peregrine falcon, were observed during the on-site biological surveys of the Project area. (Draft EIS/EIR, § 3.5.6.2, p. 3-72.)

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2.2 Environmental Consequences and Mitigation Measures

As explained in the Draft EIS/EIR, the assessment of the Project's effects on biological resources is based on the findings described in several biological technical investigation reports of the Project area which are appended to the Draft EIS/EIR as Appendices F, G, H, I, J, and K. A summary of those surveys is provided in section 3.5.6.2 at pages 3-71 to 3-81. The assessment of the Project's effects on biological resources is also based on, and includes the recommended mitigation measures set forth in, the Biological Assessment prepared on behalf of BLM and submitted to the U.S. Fish & Wildlife Service ("USFWS"). (See Draft EIS/EIR, § 4.1.5, p. 4-46.)

In order to assess the significance of the Project effects on biological resources, the Draft EIS/EIR establishes three "thresholds of significance." Based upon "NEPA and CEQA guidelines, and commonly accepted criteria," the Draft EIS/EIR states that a significant adverse impact would result if that effect could:

- Substantially affect a rare or endangered species of animal or plant or the habitat of the species;
- Interfere substantially with the movement of any resident or migratory fish or wildlife species; or
- Substantially diminish habitat for fish, wildlife, or plants.

(Draft EIS/EIR, § 4.1.5, p. 4-46.)

Based on the defined significance threshold, the Draft EIS/EIR discusses, among other impacts, each of the following:

- Impacts to Threatened or Endangered Plant Species (Draft EIS/EIR, § 4.1.5.2.1, p. 4-49);
- Impacts on Wildlife Habitat (Draft EIS/EIR, § 4.1.5.3.1, pp. 4-50 to 4-53); and
- Impacts to Threatened or Endangered Wildlife Species (Draft EIS/EIR, § 4.1.5.3.3, pp. 4-55 to 4-57).
- Cumulative Effects to Biological Resources (Draft EIS/EIR, § 5.3.3, pp. 5-12 to 5-15).

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A brief summary of the conclusions in the Draft EIS/EIR with respect to each impact is provided below.

2.2.1 Impacts to Threatened or Endangered Plant Species

The Draft EIS/EIR concludes no impact from the Project would result to threatened or endangered plant species. The conclusion is based on findings that no listed, proposed, rare, or special status plants are located in the Project area or the overbuilt 92 kV/34.5 kV transmission line corridor. (Draft EIS/EIR, § 4.1.5.2.1, p. 4-49; see also § 3.5.5.2, pp. 3-56 to 3-57.) The conclusion is also based on substantial evidence that, as described above, there is no potential on-site habitat for the Pierson's milk-vetch, the only listed plant species known to occur in the general vicinity of the Project area. (Draft EIS/EIR, § 3.5.5.1, p. 3-52.)

2.2.2 Impacts on Wildlife Habitat

The Draft EIS/EIR discloses that the total area of surface disturbance resulting from Project construction and operation within the Project mine and process area would be 1,302 acres. That figure includes approximately 1,215 acres of desert scrub habitat and approximately 87 acres of microphyll woodland habitat. The Draft EIS/EIR notes that the loss of wildlife habitat, particularly the loss of microphyll woodland habitat, would result in an incremental loss of foraging habitat for wildlife and/or migratory species such as bats and raptors. These effects, the Draft EIS/EIR indicates, would continue over the life of the Project, and some of the effects would continue for an extended period following final reclamation. The Draft EIS/EIR concludes, however, that the impacts associated with the loss of habitat, including the loss of microphyll woodland habitat, would be mitigated to below a level of significance through a combination of required reclamation of the Project area, off-site reclamation of previously-disturbed public lands not associated with the Project, and off-site acquisition of in-kind microphyll woodland habitat. (Draft EIS/EIR, § 4.1.5.3.1, pp. 4-50 to 4-53; see also § 4.1.5.4, pp. 4-64 to 4-71, 4-77.)

2.2.3 Impacts to Threatened or Endangered Wildlife Species

The Draft EIS/EIR discloses that one species, the desert tortoise (*Gopherus agassizii*), which is listed on both the federal and California threatened species lists, would be directly impacted by the Project. (Draft EIS/EIR, § 4.1.5.3.3, pp. 4-55 to 4-56.) The Draft EIS/EIR concludes, however, that impacts to the Desert tortoise and its habitat can be mitigated to below a level of significance. (Draft EIS/EIR, § 4.1.5.5, p. 4-78; see also § 4.1.5.4, pp. 4-64 to 4-77.)

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The Draft EIS/EIR also discloses that two other listed wildlife species, the peregrine falcon (*Falco peregrinus*) and Gila woodpecker (*Melanerpes uropygialis*), which were either documented during the on-site biological surveys or previously recorded in the Project area, would not likely be impacted by the Project. (Draft EIS/EIR, § 4.1.5.3.3, pp. 4-55, 4-57; see also § 4.1.5.4, pp. 4-64 to 4-71.)

2.2.4 Cumulative Effects on Biological Resources

The Draft EIS/EIR concludes that the cumulative effects on biological resources of the identified projects within the cumulative study area would be below the level of significance due to the implementation of project-specific mitigation measures to mitigate project-specific impacts on desert tortoise and other listed or sensitive plant and animal species below the level of significance and the widely dispersed nature of the cumulative projects. (Draft EIS/EIR, § 5.3.3, p. 5-15.)

3.0 REVISED ANALYSIS OF PROJECT IMPACTS ON "ENDANGERED, RARE OR THREATENED" PLANT AND ANIMAL SPECIES

3.1 Revised Threshold of Significance Under CEQA For Project Impacts On Endangered, Rare or Threatened Plant And Animal Species

As noted above, the significance thresholds in the Draft EIS/EIR for Project-related impacts on biological resources are based, in part, on the CEQA Guidelines. (See Draft EIS/EIR, § 4.1.5.1, p. 4-46.) The CEQA Guidelines establish what are commonly known as "mandatory findings of significance." These findings, which are set forth in section 15065, require lead agencies, such as Imperial County in the present case, to conclude that certain adverse impacts on the environment are significant. Such a finding is required where a proposed project will "reduce the number or restrict the range of an endangered, rare or threatened [plant or animal] species[.]" (CEQA Guidelines, § 15065, subd. (a); see also § 15380 ("endangered, rare or threatened species" defined).) Under California case law, "range" is a synonym for "habitat." (See Mira Monte Homeowners Association v. Ventura County (1985) 165 Cal.App.3d 357, 364 (Court of Appeal treats the loss of wetland acreage as a restriction in "the range of a rare or endangered plant"); Mountain Lion Foundation v. Fish & Game Commission (1997) 16 Cal.4th 105, 124 (in holding that CEQA applies to the decision to "delist" a species protected under California Endangered Species Act, the California Supreme Court invoked section 15065, subdivision (a), concluding that the threshold applied whenever a project created the "potential for population reduction or habitat restriction").)

Thus, when an EIR shows that a project will reduce the number or restrict the range of a endangered, rare or threatened plant or animal species, the lead agency, such as Imperial County in the present case, has a mandatory legal obligation to treat that impact as being significant, and to mitigate that impact if doing so is feasible. (Id., § 15065; see also Mountain Lion Foundation v. Fish & Game Commission (1997) 16 Cal.4th 105, 134; see also Sierra Club v. State Board of Forestry (1994) 7 Cal.4th 1215, 1233; Sierra Club v. Gilroy City Council (1990) 222 Cal.App.3d 30, 41; and CEQA Guidelines, §§ 15002, subd. (a)(3), 15021, subd. (a)(2).)

Against this backdrop, Imperial County understands that a Superior Court in the County of San Diego recently concluded that a lead agency failed to treat as significant the loss of habitat for certain species listed under the federal and state Endangered Species Acts. The Superior Court decision can be construed to require a mandatory finding of significance under CEQA whenever project-related impacts result in any loss of habitat to any listed species. The Superior Court decision can also be construed to require a

mandatory finding of significance except where the lead agency finds that “no net loss” of listed species or their habitat would result.

Imperial County understands that the Superior Court ruling at issue is currently on appeal in Division One of the Fourth Appellate District. Imperial County is within the same appellate district and division. Even though the Fourth District Court of Appeal may reverse the Superior Court ruling, the Court of Appeal may also affirm that decision. In light of the trial court ruling, Imperial County has concluded that Project-related impacts on listed wildlife species should be deemed significant under CEQA if the impact would result in any loss of a listed species or its habitat. (However, as stated above, the BLM has concluded that the assessment of whether Project-related and cumulative impacts on “endangered, rare or threatened” plant and animal species are significant under NEPA remains unchanged from that presented in the Draft EIS/EIR.)

3.2 Revised Analysis of the Significance Under CEQA of Impacts to Endangered, Rare or Threatened Plant and Animal Species

As explained above, impacts to endangered, rare or threatened plant or animal species would be significant under CEQA if the impact would result in the loss of any such species or its habitat.

A revised analysis of the significance of Project-related impacts on listed wildlife species is set forth below.

3.2.1 Impacts to Endangered, Rare or Threatened Plant Species

As noted above, there are no listed, proposed, rare, or special status plants located in the Project area or the overbuilt 92 kV/34.5 kV transmission line corridor, and thus no impact would result. (Draft EIS/EIR, § 4.1.5.2.1, p. 4-49.) Thus, because there are no impacts, there are no significant impacts, either under NEPA or under CEQA, even in light of the new CEQA significance threshold.

3.2.2 Impacts on Endangered, Rare or Threatened Wildlife Species Associated With Loss of Habitat

As described above, the Draft EIS/EIR identifies the Project area as potential habitat for three animals species that fall within the definition of “endangered, rare or threatened” species in section 15380 of the CEQA Guidelines: the desert tortoise (*Gopherus agassizii*), which is listed as threatened under both the state and federal Endangered Species Acts; the peregrine falcon (*Falco peregrinus*), which is listed as endangered under the state and

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federal Endangered Species Acts; and the Gila Woodpecker (*Melanerpes uropygialis*), which is listed as endangered in California. (Draft EIS/EIR, § 3.5.6.1, pp. 3-58 to 3-61, 3-63 to 3-64, 3-67.)

As regards the desert tortoise, the Draft EIS/EIR estimates that a total of between 33 and 57 individual tortoise are present within the Project area. (Draft EIS/EIR, § 3.5.6.2, p. 3-72.) Likewise, the Draft EIS/EIR discloses a single Gila woodpecker was observed on the Project site, and that “[g]eneral area records” indicate the Project area falls within the geographic range of preferred habitat for this species. (Draft EIS/EIR, § 3.5.6.1, p. 3-67, § 3.5.6.2, p. 3-72.) Finally, the Draft EIS/EIR describes the Project site as located within the geographic range of the peregrine falcon, as well as in the general vicinity of habitat preferred by the peregrine falcon for foraging and nesting. (Draft EIS/EIR, § 3.5.6.1, pp. 3-58 to 3-61, 3-64; see also § 3.5.6.2, p. 3-74.) As regards the peregrine falcon, the Draft EIS/EIR also states that the Project site is not within the identified breeding range of the species, that the biological surveys did not document the occurrence of the species in the Project area, that the species has not been recorded in previous inventories of the area, that preferred nesting habitat is absent from the Project and surrounding area, and that the Project site is not proximate to wetland habitat favored by the falcon for foraging. (Draft EIS/EIR, § 3.5.6.1, p. 3-64, § 3.5.6.2, p. 3-74.)

With respect to the loss of wildlife habitat associated with the Project generally, the Draft EIS/EIR indicates the total area of surface disturbance resulting from construction, operation and use of the Project mine and process area would be 1,302 acres. This figure includes approximately 1,215 acres of desert scrub habitat and approximately 87 acres of microphyll woodland habitat, a recognized sensitive habitat. The Draft EIS/EIR also notes that the loss of wildlife habitat, particularly the loss of microphyll woodland habitat, would result in an incremental loss of foraging habitat for wildlife, including raptors. These effects, the Draft EIS/EIR indicates, would continue over the life of the Project and some of the effects would continue for an extended period following final reclamation. Despite these effects, the Draft EIS/EIR concludes that impacts associated with the general loss of habitat, including the loss of microphyll woodland habitat, would be mitigated to below a level of significance through a combination of required reclamation of the Project area, off-site reclamation of previously-disturbed public lands not associated with the Project, and off-site acquisition of in-kind microphyll woodland habitat at a ratio of 3:1. (Draft EIS/EIR, § 4.1.5.3.1, pp. 4-50 to 4-53; see also § 4.1.5.4, pp. 4-64 to 4-71, 4-77.)

Imperial County believes the new threshold of significance changes the significance determinations in the Draft EIS/EIR under CEQA regarding the general loss of on-site habitat for the desert tortoise, Gila woodpecker and peregrine falcon. Even though impacts associated with the loss of habitat, including the loss of microphyll woodland habitat,

would be reduced in the long-term through a combination of required reclamation of the Project area, off-site reclamation of previously-disturbed public lands not associated with the Project, and off-site acquisition of in-kind microphyll woodland habitat, the impact associated with the short-term loss of on-site habitat for "endangered, rare and threatened" wildlife species remains significant and unavoidable under the revised significance threshold under CEQA. (See Draft EIS/EIR, § 4.1.5.3.1, pp. 4-50 to 4-53; see also § 4.1.5.4, pp. 4-64 to 4-71, 4-77.) [As stated above, BLM has concluded that these same impacts remain below the level of significance under NEPA, as presented in the Draft EIS/EIR.]

3.2.3 Direct Impacts on Endangered, Rare or Threatened Wildlife Species

As described above, the Draft EIS/EIR discloses that one species, the desert tortoise, which is listed as threatened under both the state and federal Endangered Species Acts, would be directly impacted by the Project. (Draft EIS/EIR, § 4.1.5.3.3, pp. 4-55 to 4-56.) The Draft EIR/EIS states, for example, that implementation of the Project would result in the unavoidable "incidental take" of the estimated approximately 33 to 57 individual tortoise that currently occupy the Project site. This impact would result, the Draft EIS/EIR states, principally through harassment and partially through direct mortality. (Draft EIS/EIR, § 4.1.5.5, p. 4-78.) Finally, as described in the previous section, Project implementation would also reduce the amount of existing habitat available for this species. Thus, even though there is substantial off-site desert tortoise habitat, and even though mitigation measures set forth in the Draft EIS/EIR, including mitigation measures incorporated into the Project design, would reduce Project-related impacts on the species, impacts associated with the loss of 33-57 individuals and the loss of on-site habitat are considered significant and unavoidable in light of the new threshold of significance for "endangered, rare and threatened" wildlife species under CEQA. (See Draft EIS/EIR, § 4.1.5.5, p. 4-78; see also § 4.1.5.4, pp. 4-64 to 4-77.) [As stated above, BLM has concluded that these same impacts remain below the level of significance under NEPA, as presented in the Draft EIS/EIR.]

In contrast to the direct impacts on the desert tortoise, potential direct Project-related impacts on the Gila woodpecker and peregrine falcon are not significant under the new threshold of significance under CEQA for endangered, rare or threatened species. As described above, the Draft EIS/EIR indicates that even though both species could be present on the Project site, that presence is either transitory or unlikely, at best. The Gila woodpecker, for example, was observed on the Project sight during the biological surveys, but that presence, and use of the Project area generally, is transient by this species. Likewise, with respect to the peregrine falcon, the Draft EIS/EIR indicates no potential nesting sites for peregrine falcons occur in the Project area and surrounding area. The

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Draft EIS/EIR also indicates that the Project site also lacks preferred foraging habitat for the falcon and that substantial off-site habitat preferred by the falcon exists in the vicinity of Project. Thus, even though it is possible that peregrine falcons could use the Project area as foraging habitat, that possibility is unlikely. Accordingly, any potential Project-related direct impacts to the Gila woodpecker and peregrine falcon would be mitigated to below a level of significance by mitigation measures set forth in the Draft EIS/EIR and incorporated into Project design. (See Draft EIS/EIR, § 4.1.5.3.3, pp. 4-55, 4-57; see also § 4.1.5.4, pp. 4-64 to 4-71.)

3.2.4 Cumulative Effects on Biological Resources

As stated above, the Draft EIS/EIR concludes that the cumulative effects on biological resources of the identified projects within the cumulative study area would be below the level of significance due to the implementation of project-specific mitigation measures to mitigate project-specific impacts on desert tortoise and other listed or sensitive plant and animal species below the level of significance and the widely dispersed nature of the cumulative projects. However, as also stated above, the impact of the Imperial Project associated with the short-term loss of on-site habitat for “endangered, rare and threatened” wildlife species; the impacts associated with the loss of 33-57 individual tortoises; and the loss of on-site tortoise habitat, are each considered significant and unavoidable under CEQA in light of the new threshold of significance for “endangered, rare and threatened” wildlife species under CEQA. Given the new, substantially lower threshold of significance for “endangered, rare and threatened” wildlife species under CEQA, it is also very likely that the individual, project-specific effects of the identified projects within the cumulative study area associated with the short-term loss of on-site habitat for “endangered, rare and threatened” wildlife species; the impacts associated with the loss of individual tortoises; and the loss of on-site tortoise habitat; would also be individually considered significant and unavoidable under CEQA. Therefore, despite the implementation of mitigation measures to mitigate project-specific impacts from the identified projects within the cumulative study area on desert tortoise and other listed or sensitive plant and animal species and the widely dispersed nature of these projects, the cumulative effects of the identified cumulative projects on desert tortoise and other listed or sensitive plant and animal species are considered significant and unavoidable. (However, as stated above, the BLM has concluded that the assessment of whether cumulative impacts on “endangered, rare or threatened” plant and animal species are significant under NEPA remains unchanged from that presented in the Draft EIS/EIR.)